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STATE OF CALIFORNIA

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July 21, 1995

BURTON W. OLIVER  
Executive Director

Dear Mr.

Please excuse our delay in responding to your letter of April 28, 1995, of which you sent a subsequent copy on May 28, 1995. Other matters requiring our attention have made such delay unavoidable. You are requesting our opinion regarding the following issues:

- I. Whether the terms, "aesthetic" or "amenity" relate to either the volume or density of timber on real property;
- II. Whether Revenue and Taxation Code Section 51.5 requires that the base year value of a property be corrected in a situation where tax exempt timber has been included in the base year value, even if ten years have passed since the base year value was established.

### LAW AND ANALYSIS

The terms, aesthetic and amenity, are found within Section 436, which provides, as follows:

On the lien date for the 1977-78 fiscal year and thereafter, all timber on both privately and publicly owned lands shall be exempt from property taxation, including possessory interest taxation, and shall not be assessed for taxation purposes. Nothing herein shall preclude the assessment of trees standing on land not zoned as timberland production under this article for purposes of property taxation based on their aesthetic or amenity value. (emphasis added)

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<sup>1</sup> All references herein are to the Revenue and Taxation Code unless otherwise indicated.

The Revenue and Taxation Code, however, does not define these terms. And California case law has not defined these terms. Black's Law Dictionary<sup>2</sup> defines the term, "amenity", as utilized in the real property context:

"In real property law, such circumstances, in regards to situation, view, location, access to a water course, or the like, as enhance the pleasantness or desirability of the property for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs."

The term, "aesthetic," is defined by Black's Law Dictionary<sup>3</sup> as, "relating to that which is beautiful or in good taste." The terms, "aesthetic or amenity value" were utilized within Section 436 to recognize the value enhancement that trees can provide to land, as opposed to their possible commercial value as timber. With respect to your inquiry as to whether "aesthetic" or "amenity" is related to either volume density of timber on real property, the "aesthetic or amenity value" of trees is not based on the volume or density of timber on the property. Several trees or even a single tree can provide aesthetic or amenity value to real property.

As you are aware, Section 436 states that timber is fully exempt from property taxation; however, the Assessor can assess trees standing on land not zoned as timberland production based on their aesthetic or amenity value. Whether an assessor, in determining the base year value for a property, included any value for trees based on their aesthetic or amenity value is a question of fact. Absent supporting evidence, we cannot assume that an assessor included the aesthetic or amenity value of trees when establishing the base year value for a property.

Your second inquiry relating to Section 51.5 assumes that an assessor, rather than including the aesthetic or amenity value of trees when establishing the base year value for a property, instead included the value of exempt timber in this value.

As you are aware, subdivision (a) of section 51.5 requires the assessor to correct any error in the determination of a base year value that does not involve the exercise of assessor's judgment as to value. If exempt timber were included in a base year value, it would not be as the result of an error of value, but as the result of a factual error. Subdivision (a) of Section 51.5 requires the assessor to

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<sup>2</sup> Black's Law Dictionary 74 (5th ed. 1979).

<sup>3</sup> Id. at 52.

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correct such an error in any assessment year in which it is discovered.

Again, please accept my apologies for the delay in this response. I hope that the above comments will be helpful to you, however, please be advised that the views expressed herein are advisory only and are not binding upon the Siskiyou County Assessor, local board of equalization, or assessment appeals board.

Very truly yours,



Mary Ann Alonzo  
Staff Counsel

MAA:jd  
precednt/timbertx/95016.maa

cc: Honorable Carl A. Bontrager  
Mr. John Hagerty, MIC:63  
~~Mr. Bill Jackson, MIC:60~~  
Ms. Jennifer Willis, MIC:70